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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Elizabeth Nelson
PO Box 1422
WARREN MI 48090

Case No. 2:22-cv-10918

Albert Thrower*
PO Box 6702
Cleveland OH 44101
Plaintiffs(s)

Judge: MATTHEW LEITMAN

-vs-

Magistrate: Anthony P. Patti

SERVICE TOWING Inc et al.,

Defendants

*New Address

FILED
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FEB - 9 2023

U.S DISTRICT COURT
EASTERN MICHIGAN

NEW PROFFERED RESPONSE TO MOTION TO DISMISS #38 and/or
MOTION FOR SUMMARY JUDGMENT

Now comes the plaintiff ELIZABETH NELSON=P, ALBERT THROWER=P ,
=Ps' and move summary judgment &/or respond to MOTION TO DISMISS #38.

(Ds) DWYER, Commissioner of the Warren Police Dept.. Michaels.

Reichling, Fouts, Gauss , filed a Motion to Dismiss Doc 38. This is (Ps') response.

Per Ex 18, police dept-city Warren website “Police Department (D) Dwyer was re-appointed Commissioner Warren Police Dept...warren police department mission statement “to serve... community and protect the lives, rights, and property of all..people of Warren with integrity, equality, and justice.”.

Per Facts Td 28 3rd Amended Complaint rewritten herein, policymaker D Dwyer did not “protect .. lives, rights, ..property .. people of Warren w..integrity, equality, and justice”, & specifically (Ps’)=Plaintiffs=Nelson & Thrower.

P Nelson decided to protect her interest in 4 cars towed before sold thru falsified paperwork as “abandoned” by Ds exited “self-isolation”, being “at risk” “people of Warren” travel from Cuyahoga County OH, a then low covid county-to Warren-then high Covid County Macomb 5/2/20, to retrieve 4 licensed, plated, insured vehicles towed from behind privacy fence, built with Warren Bldg. Dept permit-during Covid lockdown. Cars towed because “policymaker” Ds’ Dwyer, Fouts, City attorney Michaels-Van Dyke substation commander Capt Reichling, Warren Property & Maintenance employee Gauss wrote ticket on property 5/1/21 Ex G p1-2 Td39. This violated P’s rights under US Constitution, 4,5,14th Amendment. Rather than “protect the lives”, of P Warren Citizen, Ps’ were exposed Covid rate 7x Ex5 p 1-2 higher rate Macomb County, 16X Death Rate comparing Cuyahoga County OH. Ex 8 vs Macomb County Ex 9- & exponentially more risk of death/exposure.-since Ps’ “self-isolating” in Cleveland OH. Nelson

then 52 yr. old Warren citizen was “told E Mich University Dr Td39, Ex K p2
 AFFIDAVIT Ex 4 with P-original signature. P moves to have original signature
 Ex 4 apply to Td 39-Ex K Aff’t. Policymaker Ds failed to control city workers Ds’
 re Falsify address 4 vehicles towed from. Refused Ps’ to file a police report as to
 towing 4 vehicles and falsification of address on paperwork. Ps’ alleges “custom
 and policy” perpetrated by (Ds’) Dwyer, Fouts, Michaels policymakers. *Monell v.*
Department of Social Services of the City of New York, *infra* which created.. for
 civil rights Ps’ to seek money damages against a city. *Pembaur v City of*
Cincinnati, *infra* “*Monell*.. recovery.. municipality is limited to acts..
 ‘municipality’-.. acts which municipality has officially sanctioned or ordered.’”.
 “1st Ps’ alleges (D Warren) has an unconstitutional policy. These policies may
 written or unwritten, so long as .. attributed to a “policymaker.” Warren has an
 unconstitutional policy” &/or towing cars for “blight” entering private property
 without search warrant “policymakers.. elected officials (Ds Fouts, Dwyer,
 Michaels) or those defined as policymakers by state law (Ds Dwyer, Fouts,
 Michaels). This..provides a standard of causation: if a subordinate employee.. party
 responsible.. deprivation of rights, ..local entity may only be responsible if a
 certain policy was a “moving force” behind their action. This but-for standard ..
 2nd a local entity may be liable .. § 1983 for unconstitutional customs and
 practices. .. advantageous to a civil rights plaintiff when no policymaker can be

identified. ... 3) if a policymaker delegates .. authority to a subordinate employee or explicitly approves of unconstitutional actions,.. act can be said to be “of the municipality” by adoption. 4) civil rights plaintiff may allege deliberate indifference. .. applies to single-incident-type injustices and concerns the city or county’s failure to hire, train, or supervise its employees. Deliberate indifference liability attaches when policymakers of ..local entity are aware .. risk and grossly neglect to address it. Blatant unconstitutional policies are (not) authorized by city councils.. admissible evidence proving policymaker authorization or adoption of a subordinate employee’s unconstitutional action is often non-existent” . Ds Dyer, Fouts, Michaels alleges was a final policymaker] acted under color of state law; 2. acts of (Ds’) Dwyer, Fouts, Michaels final policymaker deprived P of rights under United States Constitution. (D) Dwyer, Fouts, Michaels, final policymaker had final authority from D City Warren concerning these acts. When Ds’ Dwyer, Fouts, Michaels, final policymaker engaged in these acts, (Gauss, Reichling) was acting as a final policymaker for D City Warren and acts (Ds’) Dwyer, Fouts, Michaels, final policymaker caused the deprivation of the plaintiff’s rights; that is, the (Ds’ Dwyer, Fouts, Michaels final policymaker’s acts were so closely related.. deprivation of P’s rights as to.. moving force that caused ..ultimate injury. Person acts “under color of state law” when person acts or purports to act in performance of official duties under any state, county, or municipal law,

ordinance or regulation. *Monell* liability is based on the acts of a final policymaker. ..other.. *Monell* liability, Unlawful Official Policy, Practice, or Custom... Based on a Policy that Fails to Prevent Violations of Law or a Policy of Failure to Train *Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 691. Such liability attach when official .. who caused a constitutional violation was acting as “final policymaker.” *Lytle v Carl*, 382 F3d 978, 981. “hold a local governing body liable ..official’s conduct, Ps’) must first show .. official (1) had final policymaking authority concerning.. action ..and (2) was policymaker for local governing body for purposes of particular act.” Whether .. policymaker for *Monell* purposes is a question of state law for the court” *City of St Louis v Praprotnik*, 485 US 112, 123 .. determination is made on a function-by-function approach analyzed under state organizational structure. A “policy” is a deliberate choice to follow a course of action made from among various alternatives by ..official responsible for establishing final policy” P seeking to establish municipal liability under this theory.. demonstrate that an action of final policymaker “was the ‘moving force’ behind the constitutional violation Ps’ suffered.” “To meet this requirement, Ps’.. show both causation-in-fact & proximate causation.” *Id.* A municipality may be liable.. acts of a final policymaker if these acts caused a constitutional violation, even if constitutional violation occurs only once. *Pembaur v City of Cincinnati*, 475 US 469, 478 municipality is also liable if a policymaking official fully

delegates discretionary authority to a subordinate, ..subordinate uses discretion. *City of St. Louis Id.* Official may be found to have been delegated final policymaking authority when the official's discretionary decision is unconstrained by policies not of that official's making and unreviewable by the municipality's authorized policymakers" .See Ex 15 10/12/22 Detroit Free Press "This video is sickening, ...Detroit teen punched, kicked by Warren Police" Warren Police kick black youth. (Ds') Dwyer, Fouts, Michaels condones this illegal behavior, &/or § 1983 for unconstitutional customs and practices. Warren police chief D Dwyer mission statement Ex 18 p 3/8: "Professional .. members..Department will conduct themselves in a manner that is consistent with professional standards for performance, .. standards ..adherence to our mission (4/8) and other core values. We perform our roles ethically .. integrity as we represent Warren Police Department, ." (Ds) Dwyer, Fouts, Michaels, Reichling, Gauss involved in Ps' facts does not comply w Warren police dept mission statement. Ps' avers (Ds) Dwyer, Fouts, puts same on paper, but "custom and policy" does not train officers to adhere to Mission Statement.

(Ds) Dwyer, Fouts, Michaels, Gauss, Reichling, allege a 1st time defense of "blight" abandoning "MI Abandoned Vehicle defense" "Warren City Ordinance Sec. 2.5-7 (Ord. No. 80-731, Sec 1, 8-11-15)" Doc 41 filed 10/10/22 @ pg. 4, Codes not annexed Td38 Motion to Dismiss or any Ticket with Ps' name on. "The

purpose .. ensure compliance Warren Code of Ordinances designated as blight violations. “previous enforcement mechanisms were not ensuring blight violation code compliance”, hence “Sec 2.5-7 Ord. No. 80-731, ..read *in para materia* with the previous Ord. 8-11-15 Sec. 2.5-2. - Definitions. *Blight violation*. A violation of a provision of the Code of Ordinances, including appendices, which is designated as a blight violation.”

Ps’ states unconstitutional-since “blight” never defined so a person would understand “blight” under “void for vagueness” doctrine. Or absent a definition, common meaning “blight” must be accepted. “The void-for-vagueness doctrine ..uncertain laws, .. criminal or civil, violate due process and cannot be enforced. .. based on individual rights and one based on constitutional structure” “Definition. ..criminal law, a declaration ..law is invalid because it is not .. clear. Laws are .. found void for vagueness if, .. punishment, law does not specify what is required or what conduct is punishable” “ Vague laws raise problems with due process”. Connally v. General Construction Co 269 US 385 law is unconstitutionally vague when people “of common intelligence must guess at its meaning.” .. unduly vague it raises problems under Due process guarantee, ..applicable to federal government 5..14th Amendment”. Definition “blight” is a violation of criminal statute, .. “up to 93 days”. 2nd-if statute not define a word, “blight”

everyday meaning must be used. “Words .. everyday meanings” Canons Construction Galia Gardner. 3rd, criminal statute, “rule of lenity” applies “principle of criminal statutory interpretation .. requires a court to apply any unclear .. law in the manner that is most favorable.. defendant.” In re “blight” definition to not include licensed, plated, insured vehicles.

Holloway v. United States, 526 US 1, 21 Statute cited Ds’ Dwyer, thru his policy making authority as Police Commissioner Td39 ExQ-previous Warren police Commissioner Nichols contract p 5 “Police Commissioner ..head of Police Dept, shall organize & conduct.. affairs ..dept preservation of quiet and good order of the city and safety of persons and property therein.. is the policy” i.e. D Dwyer “policymaker”- nowhere allow D Reichling, Gauss enter private property to remedy “undefined” “blight” violation-which under their definition includes licensed, plated, insured vehicles during Covid lockdown. “If the alleged violator was served proper notice” Ps’ never served Notice infraction, P NELSON being renter 7568 Hudson, P THROWER manager -any notice US Constitutionally defective under 4, 5, 14th Amendments not include P NELSON name owner 4 cars 5/1/21. Ex A, Td 39 P NELSON driver’s license listing 7568 Hudson Warren, Td 39 Ex C lease. Ex4 Afft P Ex K p 1-2 Doc 39 WHO (World Health Organization) declared covid a Worldwide Pandemic 2/20 Ex 1 Ds’

Michaels, Dwyer, Reichling, Fouts, Gauss, did not delineate this -as cars could have belonged to multiple parties not listed in any alleged ticket in violation of Supremacy Cl United States Constitution: Art VI, Para 2 assuming arguendo (Ds') aver Warren Ord gives *carte blanc* enter private property, seize cars without search warrant as "equitable relief" then ordinance in violation 4,5,14th Amendment US Constitution, because does not state owner car be identified & given constitutional notice. Law Insider definition "blight": "Blight means areas .. with obsolete or inadequate infrastructure, ..building structures are dilapidated". As a matter of fact/law, cars do not meet the definition of "abandoned vehicles",... misdemeanor (90) days. Ex 23 (D).. Fouts prepares for influenza..covid, dated 2/26/20, 10 days before any alleged hearing. Pg 3,"Our residents can feel at ease knowing that their health and well-being is now and always will be my number one priority. my administration, beginning with Police Commissioner (D) Bill Dwyer.. are working to ensure your safety..". (D) Dwyer (D) Warren police officers Reichling: are not "D Dwyer..working to ensure your safety..", Ex 23, pg 3, (D) Mayor Fouts Press Statement 2/26/20. Ps' were exposed a minimum 7X increased Covid exposure rate, 16x more likely to die as calculated *infra*: New York Times data collected from state Health and County Health Departments. Per Ex 5 "May 2,

2020” when (Ps’) left Cuyahoga County, OH, New York Times Tracking Coronavirus “Daily Average 63..” cases, of COVID 19. Per Ex 5 pg 5 pg 2, “May 2, 20, “Daily average (deaths) 3.4 New Deaths 0”, Cuyahoga County, Oh. Per Ex 12, Cuyahoga County Pop. 1.241 million 2020. Per Ex 11, Macomb County Population 870,893 2020, Ex 6 Macomb County “May 2, 20: “Daily Average 77” Covid cases. Hence, Macomb, with 1/3 less population-had+14 new Covid cases day 5/2/20 than Cuyahoga County. Per Ex 5 pg. 2, “May 2, 20 Daily Average 3.4 New deaths 0” Cuyahoga County. Per Ex 9 “May 2, 20 Daily Average 16 New deaths 11” Macomb County, showing increased risk (Ps’) 16X+ Death Rate-adjusted 30% more population. Ps’ were “self-isolating” Cleveland having to exit single family home creating infinite increase in Covid exposure. Ds’ Dwyer, Fouts, Michaels, Captain Reichling, Gauss should have as MI abandoned statute reads, ran plates, vin, and determined owner 52 yr old (P) “at risk” individual as defined by covid emergency orders, Ex 25 4/2020 Dept of Human Services guidelines, and if they did not “egg shell” theory tort law applies:” **Torts.** Under eggshell-skull rule,..defendant is liable for all injuries caused by his tortious conduct, even if (Ps’) suffers an unusually high level of damage e.g., due to a pre-existing vulnerability). The rule is supported by the axiom “defendant must take a plaintiff as he finds

him” Vosburg v Putney, 80 Wis 523 seminal case eggshell rule. Prosser, Handbook Law of Torts § 43, 261 Restatement 3d of Torts: Liability for Physical and Emotional Harm, § 31, Ex 25 4/20 Dept Health Human Serv “staying at home during coronavirus crisis ‘to avoid being exposed to the coronavirus, it is important for everyone to stay at home during coronavirus crisis.. immune systems weaken with age, making it harder to fight off infectious diseases. Cancer treatment (which Ps’ had in past & P Thrower was being treated @ METROHEALTH CLEVELAND OH radiation 5x week) ...weaken immune system .. harder.. body to fight off virus..stay home”. Ex 26 (D) Fouts covid “health and safety of residence is our priority”. Yet (Ds) Fouts, Dwyer, Michaels policy-makers actions “health and safety of residence” did not apply to (Ps’). (Ds’) employees, police (Ds) Gauss, Michaels, Reichling, out towing cars off private property, via (Ds) Dwyer, Fouts, Michaels, via their policy. Td 39 ExL) Affidavit landlord, tenant para 7-8 said Warren police were involved in the 5/1/20 4 car towing, 2nd towing 7/7/21 towing (P) Honda-affiant witnessing. Td39 Ex P pic of markings on Honda “WPD”=Warren Police Dept. 1st towing 5/1/20- 4 vehicles, as alleged “abandoned”, per (D) defense to court, 2nd towing as “blight”, 7/7/21. See Ex Z Gov Whitmer order Td39, Ex 3 2020 in effect 1st towing 5/1/20 Temporary requirement to suspend activities .. not necessary

to sustain or protect life Covid.. *can result in serious illness or death. ..Older adults and .. chronic health conditions are at particular risk, and there is an increased risk of rapid spread of covid.. close proximity to one another*"

Td39 Ex Y "willful violation of this order is a misdemeanor" Ds Fouts, Dwyer, Michaels, Reichling, Gauss were in violation gov emergency orders

Td39 ExZ. D mayor Fouts orders Td39 ExY adopting gov orders. (P)

NELSON Mi resident 7568 Hudson Ave Warren Mi, Td39 Ex A, Driver's

License Td39 Ex C Lease-P lease residence (home=4th Amendment)

includes adjacent lot 7560 Hudson fenced Td39Ex D-pic fence, Doc 39 Ex B

p1-2 conveyance.. 7560 Hudson PID #13-333-278-008. Td39 Ex D, ExA

Td1, pic sent to D Michaels "uploaded .. May 01, 2020, 10.05 AM" cars-

Sentra, Mazda B4 towing. Other 2 vehicles not pic on adjacent lot. Td39 Ex

E p 1-2-title Mazda, Mazda Ex 2 Pic. Td39 ExF "Evidence of Coverage Mi

No Fault Insurance" 4 cars.

Td39 Ex G,-pic ticket wrote by D Gauss 5/1/20 7568 Hudson re tenant= eviction stayed because of Covid and "harboring in place" telling tenant leave when Covid raging, proving D Gauss @ scene 5/1/20 when cars towed.

P Honda was towed from behind, 7/7/21 damaging paint without notice or

"opportunity to be heard", violated 4, 14th Amendment US Constitution. Ex H

Td39 article shows Mayor Fouts "personally involved", See "promises kept" from

Warren Website. *Chupa v Morceri, Fouts, et al.*, Case #2:06-cv-12584, complaint para 30. “Defendant Fouts’ action.. was wrongfully motivated by defendant Fouts’ desire to use municipal power to harass and injure plaintiffs”, showing Fouts “custom and policy”. (P) NELSON 7/7/21 HONDA towed “operable” Td39 ExK Afft P Ex 4 p1-2, Td39 ExJ-landlord afft contrary to court order tow “inoperable vehicles” entered after vehicle towed. Td39 Ex I: Pic Car Speedway after left D Service Towing Inc tow yard. Td39 Ex J court order dated 7/7/21 entered same day Honda towed, Td39 Ex J Afft landlord P THROWER @3 “tow employees said ‘Honda cannot be towed without damaging it because it is at an angle behind the house (7568 Hudson”, then towed. Td39 Ex J Afft P THROWER affiant states “he was not in court 7/7/21”. P NELSON in hospital 7/7/21, Td39 Ex K Afft-& attached Ex 4, cannot be deemed to have “constitutional notice” alleged order by court 7/7/21 entered same day as car towed. Ds where aware other tenants in property and did not ascertain who owned Honda before tow. Ds’ Michaels, Gass, Reichling, Dwyer did not give Ps’ “notice & opportunity to be heard, .. right to procedural due process.” *Thompson v Ashe*, 250 F3d 399, 407 CA6 *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306 “Notice must be reasonably calculated...inform interested parties .. action ...opportunity to respond” Ds’ Gauss, Michaels, Reichling, Dwyer, Fouts, Doe police to go tow cars off private property, 5/1/20, when covid raging, state, city under emergency orders “stay at

home” Gov Emergency Orders Ex 3 pg 1-3, Ex Z Td39 Ex 30 p 1-8 D Fouts
2/26/2020 Emergency Orders.

Warren Courts open, & “policy” in Warren is to write a ticket on vehicle or any
alleged infraction, and then a court date is set. D Fouts Facebook (FB) pg inciting
Ds’, to attack “blight”. Ex H p 1-2 Td39 D Fouts FB “personally involved,
personally liable” as policymaker “ city of warren - State of the City .. June 24th, I
promised ..Warren landlords ..tickets for *blighted* homes . . violations International
Property Maintenance Code and a Td39 Ex J *NILI v City of Warren*, 2015 ED MI
Court opined International Property Maintenance Code was illegally applied by
City of Warren, (D) Fouts (D) City Council-for failing to have appeal process etc.
7/7/21 towing of P NELSON 2008 Honda without NOTICE, when P NELSON in
Macomb Ascension hospital. FB post states “blighted homes”. Td39 ExP
windshield P NELSON towed Honda 7/7/21, “blight”, WPD=Warren Police Dept
including D Dwyer-policymaker. Td39 Ex Q standard Warren Police
Commissioner contract gives (D) Dwyer “policymaking” authority over Warren
Police Dept. oxford blight: "vacant properties are a blight on neighborhood" P
NELSON Honda does not fit definition “blight”, windshield. Td39 Ex P, Ex2 pic
2012 Mazda towed. Td39 Ex K-Ex 4 hereto Aff’t Ps’ avers facts are true under
oath. Cars towed by Ds’ Service Towing Inc, *et al* no “probable cause” per 4th
Amendment US Constitution, no search warrant: “right of people to be secure ..

persons, houses, papers, and effects, against unreasonable searches..seizures, shall not be violated, .. no warrants shall issue, but upon probable cause” No “procedural due process” re “notice and an opportunity to be heard” re taking vehicles 4,14th Amendment of US Constitution City Warren thru policymakers Ds’ Fouts, Dwyer, Michaels, employee Gauss knew or should have known had they been properly trained “lack of training” towed vehicles was in violation of US Constitution 4,5,14 Amendment 5/1/20, Ds ‘Gauss, Reichling, entered property 7568 Hudson Ave & adjacent lot (7560 Hudson Ave) owned by the same entity and towed 4 vehicles, D Gauss was aware tenants in property Td39 Ex G pg 1-2. P NELSON owned cars, a renter lease agreement =home Td39 ExC lease, ExA, ExD insurance papers Td39 Ex E p1-2 Title Mazda, Ex 2 Pic Mazda, Ex 17, SAFEAIRBAG.COM, “our records, you have 3 registered vehicles linked to your address.. 7568 Hudson Ave” Federal Dept Transportation, knows P Nelson’s address “airbag safety recall”. Td1 Ex A pic 5/1/20=2 vehicles parked @ 7568 Hudson Warren B4 towing pic Td1 Ex 1 & DOE-Michaels Asst City Attorney “tow off private property”, bottom Td1 Ex A, 5/1/20 10.05 AM. D Reichling assisted towing-or sent warren police doe officers to location, thru “custom and policy” of D Dwyer. US constitution 4th Amendment does not allow city of warren Gauss, Reichling to enter private property to inspect vehicles VIN or tow vehicles or to call, conspire with (d) service towing inc, et al Ds & tow vehicles off

private property without court order or take personal property. Gov Ex 3 pg 1-4 , D Fouts, Ex 30 pg 1-8 issued emergency orders covid pandemic. Gov “emergency orders” did not suspend US Constitution. Td39 ExV: City of Warren received 3.5 % of its budget from forfeiture. Ds, Reichling, Gauss, Scott, Cummins should have reviewed falsification paperwork 5/1/20 when vehicles towed and should’ve informed (D) Michaels after running VIN #’s 4 vehicles were properly titled, plated-Ex D: Td1 Registration Silverado, Ex E Td1 owner P NELSON. §1983 for unconstitutional customs & practices. D Reichling doing statutory duty running vin #’s before towing would show owner P NELSON 52 yr old woman “at risk’ during covid-gov emergency order. Per Ex B Td 1 petition for hearing on abandoned vehicle p. 2 MCL 257.252 “Before determining ..vehicle... is abandoned, police check to see if it is reported as stolen”. Ex B Td1 “Complaint Number 20-18750” yet still allowed 4 cars towed either by “failure to train” or entering conspiracy private tow parties Ds’, or ‘deliberate indifference”.

Ps’ have US Constitutional right due process cl 5, 14th Amendment file police report since physical paperwork shown Doe Warren police officer, Reichling, address falsified to fit statutory definition abandoned vehicle Mi law. Doe officer was going to file police report but overridden officer 2. This “failure to report a crime” 5/1/20 when initial cars were towed and again on or about 7/21 attempt to file police report. D Gauss Td39 Ex G pg 1-2, ticketed tenant 7568 Hudson 5/1/20

“illegal occupation” of structure, when gov, D Fouts stayed evictions, exposing failure to train actions by Ds’, deliberate indifference by policymakers Ds Fouts, Michaels, Dwyer. P avers Petition for hearing on abandoned vehicle Td1 ExB is *void ab initio* since caused to issue via falsified paperwork, falsified address *257.252a abandoned vehicle" means ..vehicle .. private property without consent owner. (b).. public property ..48 hours, or on a state trunk line highway"*

Discovery needed to ascertain if D Reichling 5/1/20 ran Vin #'s determined P owner following law Td 1 Ex D, E Registration had he been properly trained & not towed cars City of warren website “health and safety of our residents is our priority. .. utmost importance .. residents informed ..unprecedented times” city of warren covid” approved by (D) mayor Fouts”. Actions of Ds’ Ps’ life was endangered by state actors creating a situation where P NELSON decided to recover \$30G cars-travel from low covid risk county OH to high covid risk county MACOMB MI to retrieve P NELSON cars-enter Service Towing Inc., exposing P THROWER to covid Ex 30 D Fouts 2/26/2020 orders name D “Dwyer” conferring w/ D Fouts re covid. Ds’ Service Towing Inc, et al., had 6 in x 4 inch sign on window “1 person in office” but Ds Service Towing Inc employees not enforcing sign allowing anyone enter 7’x7’ waiting room. When helper retrieve vehicles 2 people in office, exposing P THROWER to higher incident covid in process. I.e., had P THROWER contacted covid in waiting room would’ve exposed P

NELSON. D Fouts is “personally liable”, “personally involved” in decisions running City of Warren. 6/21 Fouts state of city address Td39 Ex F, “get absentee out of state landlords”, Td39 Ex G newspaper landlord (P Thrower) “arrested” after D Fouts said “target out of state landlords” 7/7/21 P Honda towed parked behind 7568 Hudson. Ds’ violated P’s 42 USC§ 1983, 1985-4,5,14 amendment violation US Constitution to be free of unconstitutional search & seizure 5/1/20, 7/7/21. Ds all times relevant to action acting under color of state law. Ds Reichling, Gauss via custom and policy acting thru policymaker Fouts, Dwyer, Michaels made an unreasonable & warrantless seizure of P property, tow 4 vehicles, violating 4,14th Amendment US Constitution. At all times Ds’ Dwyer, Michaels, Fouts acted pursuant to “policy or custom” in depriving P NELSON of 4 cars 5/1/20, 7/7/21 personal property without court order or opportunity be heard, acting in individual capacities in conspiracy &/or concert with private parties. D city of warren failed to adopt clear policies, failed to properly train its employees Ds Gauss, police Reichling removing vehicles from private property during covid emergency.

Ds’ taking P NELSON vehicles caused Ps’ “at risk person” leave low covid Cuyahoga County OH to come to high Covid county Macomb MI, exit “self isolation” 7x+ covid exposure rate, 16x+ covid death rate, retrieve cars endangered P’s life violates 42 USC Sec 1983, 1985,1988 in violation gov emergency orders,

D Fouts emergency orders "P can ..invoke federal court jurisdiction.. suffered .. *threatened* or actual injury resulting from .. putatively illegal action." *Linda RS v Richard D*, 410 US 614, 617, Fouts, Dwyer, Michaels, Gauss, Reichling ignored Gov emergency covid orders towing "threatened ..injury resulting from putatively illegal action" *Linda RS id.*, violated P due process, 4,5,14th Amendment US Constitution. Ds' violated P US Constitutional rights Due Process Cl 4, 5, 14th Amendment when address falsified on paperwork submitted Mi Sec State give Ds' alleged authority tow vehicles 5/1/20, & failed to allow Ps' to file police report. Ps' ask for order Ds' policymakers Fouts, Dwyer, Michaels violated P US Constitutional rights Due Process Cl 4,5,14th Amendment ensures no party will be deprived of property without notice and an opportunity to be heard" *Fuentes v Shevin*, 407 US 67, 80, protection of property ..extended to "any significant property interest", "uninterrupted use of one's vehicle.. property interest, .. before 'local government may so interrupt its use, owner is entitled to due process' *Bell v Burson*, 402 US 535, 539. P states 4 vehicles towed off private property registered, titled, plates, insured without notice, courts open without court order is an improper seizure prohibited by 4th Amendment. .. include protection of privacy against arbitrary invasion US v *Ortiz*, 422 U.S. 891, "*Jacobsen*, 4th Amendment protects 2 types of expectations, involving 'searches,' .. other 'seizures.' A 'search'

occurs.. expectation of privacy .. society.. is infringed. ..`seizure' of property occurs ..interference ..individual's possessory interests" 4,14 Amendments Due process cl § 1983 for unconstitutional customs and practices. P avers "outrageous conduct" in concert &/or conspiracy with Gauss, Reichling, Dwyer, Michaels, city warren. Per complaint facts Ds' violated Ps Constitutional rights US Constitution, 5, 14th amendment, Due Process Cl 42 USC 1983, 1985, 1988. "42 USC 1983 imposes civil liability ..person acting under color of state law who deprives another.. rights, constitution" *Kallstrom v Columbus*, 136 F3d 1055, 1060 6CA "state ..not..greatly increase..risk of harm .. citizens without due process of law through its own affirmative acts" *id* 1066. P claims Ds' Gauss, Scott, Does, Dwyer, Fouts, Reichling, Michaels, Warren actions were liable for (Ps') increased "state created danger" theory of liability. "liability under state-created-danger theory ..affirmative acts by state which either create or increase ..risk ..individual will be exposed to private acts of danger" *id*. "to bring a 'state created danger' claim,..show:'an affirmative act by state.. either created or increased risk (P) would be exposed to an act.. (2) a special danger to (P) wherein state's actions placed (P).. at risk, .. affects..public at large; 3) state knew or should have known..actions .. endangered (Ps')" *Jones v Reynolds*, 438 F3d 685, 690 6CA *Harlow*, 457 US @ 818 *Kallstrom*, "an individual's 'interest in preserving her life .. constitutional dimension.'" *Id* 1063 Ex3 gov emergency orders, covid, Ds' Michaels, Fouts,

Scott, Dwyer, Reichling knew or should have known towing 4 vehicles cause Ps' exit self-isolation, violate Ds' Fouts, Gov "emergency orders" to retrieve cars or lose exposing P to "state created danger", "1) affirmative act by state (employees) .. either created or increased risk (Ps') would be exposed 2)..special danger to (Ps')..state's action placed (P).. at risk", *Cartwright v City of Marine City*, 336 F3d 487, 493 CA6. Ds' were aware of Covid, 5/1/20, Ds' Fouts entering "emergency orders", Ex 23 Fouts 2/26/20 Press Release re covid. D "Dwyer" gov orders "self-isolation" cause P exit self-isolation, retrieve cars. Ds' policymakers Michaels, Dwyer, Fouts, failure to train Reichling, Gauss. . Per Ex 5 "May 2, 2020" when (Ps') left Cuyahoga County, OH, New York Times Tracking Coronavirus "Daily Average 63.." cases, of COVID 19. Per Ex 5 pg 5 pg 2, "May 2, 20, "Daily average (deaths) 3.4 New Deaths 0", Cuyahoga County. Ex12, Cuyahoga County Pop. 1.241 million 2020. Ex 11, Macomb County Pop 870,893 2020, Ex 6 Macomb County "May 2, 20: "Daily Average 77" Covid cases. Hence, Macomb, with 1/3 less population-had+14 new Covid cases day 5/2/20 than Cuyahoga County. Per Ex 5 pg. 2, "May 2,20 Daily Average 3.4 New deaths 0" Cuyahoga County. Per Ex 9"May 2,20 Daily Average 16 New deaths 11" Macomb County, showing increased risk (P)16x+Death Rate-adjusted 30% more population. Ps' were "self-isolating" Cleveland. Ex 22 Cuyahoga County Exec Budish, "Summer 2020..Covid....worst crisis we have lived through..". Ds' endangering Ps' life thru

their actions, “§1983 for unconstitutional customs & practices”. D Fouts 2/26/20 Press Release Ex 23, “implemented a public health management decision making training for all Police...Covid (p3) Our residents can feel ease knowing that their health and well being number-one priority...beginning w Commissioner Dwyer.. ensure your safety” & or § 1983 for unconstitutional customs & practices of Ds’ policymakers Fouts, Dwyer, See Td39 Ex Q p3 Sec 7.3 Duties .. Mayor D Fouts, “enforcement of ordinances ..of council..”

Per facts Ds violated P US Constitutional rights Due Process 5,14 amendments to make police report if laws broken. 7/21 Ps’ attempted make police report @ station D Reichling concerning “falsification” address 4 vehicles were towed. Police officer Doe Complaint #20-18750 Td1 Ex B Pet for Hrg. This “failure to report a crime” 5/1/20 cars towed & 7/21 attempt file police report violated P Constitutional Due Process to “procedural due process” right “report a crime”, file a complaint. Gov Covid Order 4/30/20 “spread .. virus is for people to stay home and keep their distance from others. .. hold on evictions’ Gauss Ex G Td39 ticket tenant 7568 Hudson - in violation of gov orders- tenant eviction Td39 ExU, annexed hereto Tsp Ex19#206101LT stayed 3/20 pandemic emergency orders Td39, Ex Z gov emergency order No. 2020-70 in effect when cars towed 5/1/20. Did falsifying address Td1 Ex B,C, Td39 ExW rise to Due Process violation 5, 14th Amendment US Constitution. Falsification is imputed to Ds’ Dwyer, Fouts,

Michaels via lack of training, custom and policy, deliberate indifference. §1983 for unconstitutional customs & practices. Sec of State cars registered ExB,C,D Td1, ExE p1-2, ExWp1-3. Per Aff't P NELSON Ex 4 pg 1-2, Td39 Ex K pg 1-2, did Ps' have Due Process, right to file a police report about 7/21/21 re falsification of address, *Monroe v Pape*, 365 US 167, 174-76 Supreme Court held .. non-state actors can, ...engage in conduct under "color of State law," ..subject to liability under..1983 .. "act jointly" or conspire with state government officials. *Brentwood Acad. v Tenn Secondary Sc. Ath Ass'n*, 531 US 288, 296 "finding liability..criminal law 1983, acting in "conspiracy", "jointly". At all times policymakers Ds Fouts, Michaels, Warren, Dwyer, acted pursued policies, practices, deliberate indifference ..direct and cause of unconstitutional violations. Policies include, Dwyer, Fouts, Michaels failure to supervise, Ds Reichling, Gauss. Ds' Fouts, Michaels, Dwyer have policy making authority Warren #2:21-cv-10446-DPH-APP ECF No. 1, PageID.18 Filed 2/26/21 p 18/26 Warren to implement proper training for Warren police officers, city workers. Warren historically failed to train *Moldowan v Warren*, 157 F3d, 351, 393-394 6CA Warren imputed to policymakers Ds' Dwyer, Michaels, Fouts, *Monell v Dep't of Soc. Servs of NY* 436 US 658, 691 "liability attach when official .. caused a constitutional violation acting "final policymaker", i.e. policymakers Dwyer, Michaels, Fouts directing grills be seized, tow cars via policy by D Gauss, Reichling. P grills taken 5/1/20, 7/7/21, Td39 Ex DD, Warren

Weekly 4/21, grills legal in Warren, contrary D Fouts wishes. D Gauss, continue to seize grills, in violation of 4/21 Warren Ordinance passed by Warren City council. & or § 1983 for unconstitutional customs and practices of Ds'

Respectfully submitted,


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Albert Thrower pro se

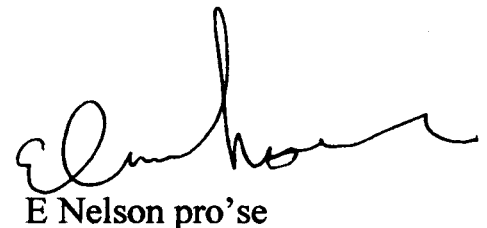
CERTIFICATE OF SERVICE

A copy of this motion has been served on all counsel for defendant's 1st class mail with tracking this 2/09/2023 to:

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